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***Financial Management and Budget
Management Control Review***

***MANAGEMENT CONTROL REVIEW: ADMINISTRATION
OF MSA FINES, PENALTIES AND FORFEITURE FUND***

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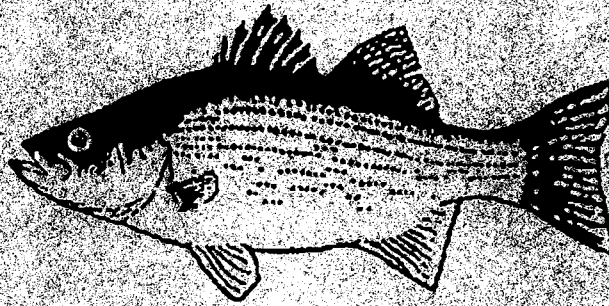
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MANAGEMENT CONTROL REVIEW

ADMINISTRATIVE AND MANAGEMENT REVIEW
FISH MANAGEMENT AND CONSERVATION



U.S. Department of Commerce
NMFS Office of Law Enforcement / NOAA Office of GCEL

September, 1997

MCR REFERENCES / DOCUMENTATION

1. Preliminary guidance to the SAC's from Morris Pallozzi, Director NMFS Office of Enforcement, February 27, 1991
2. Additional guidance to the SAC's from Morris Pallozzi, Director NMFS Office of Enforcement, entitled "Fund Use Guidelines Number 2", May 15, 1991
3. Memorandum to all the SAC's from Michele Kuruc, AGCEL, entitled "Asset Forfeiture", May 18, 1991
4. DOC Office of the Inspector General Audit Report TTD-0202-1-0003 to the Undersecretary for Oceans and Atmosphere Re: the Asset Forfeiture Fund, September 30, 1991
5. Semi-Annual Report to the Congress of the DOC Inspector General, November, Re: the Asset Forfeiture Fund, 1991
6. Policy Memorandum from Cary Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture, U.S. Department of Justice, to United States Attorney (coastal districts), June 1, 1992
7. Memorandum for general distribution from Michele Kuruc, Assistant General Counsel for Enforcement and Litigation, entitled "Resolution of NOAA's Entitlement to Forfeited Proceeds Under the Magnuson Act", June 3, 1992
8. Fax Memorandum to all SAC's from Morris Pallozzi, Director NMFS Office of Enforcement, entitled MA Fund Use Guidelines Number 3", June 28, 1992
9. Guidance distributed at the state and federal fisheries enforcement conference held at Ellicott City, MD, August 17, 1992
10. Report of Kenneth Crossman, Magnuson Fishery Conservation and Management Act Asset Forfeiture Fund, 1993

11. Fax Memorandum to all SAC's from Morris Pallozzi, Director NMFS Office of Enforcement, entitled "Monthly Reporting Requirements: Program Funds, Asset Forfeiture Funds", March 10, 1993
12. Memorandum from Michele Kuruc, Assistant General Counsel for Enforcement and Litigation to Brennan, Pallozzi, Humphries, et al, regarding Reimbursement Guideline for Administrative Law Judge Services, June 8, 1993
13. Memorandum from Gene Proulx, Acting F/EN, assigning responsibility for processing Fund requests, August 18, 1994
14. Memorandum to all SAC's from F/EN (Gary Gailbreath), entitled "Fund Pro-Rata Percentages", August 29, 1995
15. Memorandum to all SAC's from F/EN (David McKinney), entitled "Fund Pro-Rata Percentages", June 27, 1996
16. Department of Justice Office of the Inspector General Audit Report 96-21A, Asset Forfeiture Program Annual Financial Statement, Fiscal Year 1995, September, 1996
17. Directives Manual Transmittal Number 23 to all SAC's from F/EN (David McKinney, entitled "Asset Forfeiture Fund - Travel Orders", March 20, 1997
18. Magnuson-Stevens Fishery Conservation and Management Act, P.L. 94-265, as amended through October 11, 1996. And specifically, Title 16, USC, Chapter 38, Section 1861 (e)

EXECUTIVE SUMMARY

ADMINISTRATION OF THE NOAA MAGNUSON-STEVENSON ACT FINES, PENALTIES, AND FORFEITURE FUND

I. INTRODUCTION

THE FUND

The statutory authority for the NOAA Fines, Penalties, and Forfeiture Fund (the Fund) is the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA), the primary law governing commercial fishing in the United States. In November, 1990, Congress greatly expanded the Fund authority.

The Fund contains fines, penalties, and proceeds of forfeited assets that are collected by the Secretary of Commerce for violations of marine resource laws. There are no appropriated monies in the Fund.

The MFCMA provides specific guidance about how Fund monies can be spent. Expenditures are restricted to certain purposes relating to law enforcement and prosecution.

Since the Fund's inception in 1990, deposits have been about \$24.8 M of which about \$21.6 M has been spent. Accordingly, the Fund now has a balance of \$3.2 M.

FUND ADMINISTRATION

The Fund is administered by two offices in NOAA Headquarters (in Silver Spring, MD): NMFS's Office of Law Enforcement (OLE) and NOAA's Office of the Assistant General Counsel for Enforcement and Litigation (GCEL). These offices co-manage the Fund, with neither office having complete authority or responsibility for Fund administration. Therefore, they have both separately and jointly developed oral and written guidance to supplement the controlling provisions of the statute; this guidance is the

basis for the management process described in this Management Control Review (MCR).

Two Assessable Unit Managers have direct responsibility for assuring that an internal control system is in place and operating effectively: the Chief, Office of Law Enforcement and the Assistant General Counsel for Enforcement and Litigation (AGCEL). A support staff member from each office in the Headquarters of OLE and GCEL has administrative duties. The Special Agent in Charge (SAC) and his designee in each of the five Divisions of OLE have some delegated management authority over the Fund. Support personnel in each Region prepare documents or records associated with the Fund. The staffs of both offices, 177 full time employees (FTE's), are all potentially involved in the administration and / or use of the Fund.

Requests for expenditures from the Fund usually originate either in the five Divisions of OLE (one in each of the five NMFS Regions) or in the five field offices of GCEL (that correspond with the NMFS Regions.) Both Headquarters offices review these requests and determine if they should be approved. In certain circumstances, a SAC may approve expenditures that originate in the Divisions of OLE. Expenditures requested by enforcement attorneys in GCEL, however, may only be approved at Headquarters.

SELECTION OF THE MCR TOPIC

As intended by Congress, the Fund provides a significant source of alternative monies to maintain and expand appropriate law enforcement and prosecution activities. The Fund is used for certain travel, equipment, training, and contract services.

The OLE spends an amount from the Fund that is equal to about 29% of its current appropriated budget. As experience has been gained in using the Fund, expenditures have increased; however, more recently Fund receipts have not increased as rapidly as expenditures.

The Fund has not been the subject of a previous MCR or a recent, formal audit. The Assessable Unit Managers of the Fund volunteered to conduct this MCR to determine if administrative improvements are needed.

This MCR examines the internal controls governing the use of the Fund by both OLE and GCEL. In accordance with the Federal Managers' Financial Integrity Act, these controls are intended to ensure that: Fund obligations comply with the statutory law; Fund assets are safeguarded against waste, loss, unauthorized use, and misappropriation; and Fund expenditures are recorded properly so that reliable financial and statistical reports can be prepared and accountability can be maintained.

SELECTION OF THE MCR TEAM

The Assessable Unit Managers selected an MCR Team consisting of a representative of the Office of Operations, Management, and Information to coordinate the MCR, an MCR Team Leader from the Office of Enforcement, and MCR Team Members from each OLE Division and from GCEL. (SEE APPENDIX 1: MCR PERSONNEL) The MCR Team then prepared a detailed work plan and schedule to complete the MCR. (SEE APPENDIX 2: DETAILED WORK PLAN AND SCHEDULE)

II. METHODOLOGY

DOCUMENTATION

The MCR Team examined background materials including: the General Accounting Office (GAO) Standards for Internal Controls in the Federal Government; various written guidance from the Director, Office of Enforcement, and from the Assistant General Counsel for Enforcement and Litigation; audit reports of the Inspector Generals of the Department of Commerce and the Department of Justice; special studies of the Fund's performance; and the MFCMA. (SEE APPENDIX 3: REFERENCES AND DOCUMENTATION)

RISKS AND OBJECTIVES

In order to evaluate the effectiveness of the internal controls, it was necessary to describe the "risks" and "control objectives" associated with administration of the Fund. Risks are negative events or situations that would occur if all or part of the process was not carried out as planned. Control objectives are the opposite of risks, i.e., conditions which NMFS and GCEL do want to occur.

The MCR Team identified the following control objectives:

- Expenditures from the Fund comply with laws and applicable guidance.
- Equipment charged to the Fund is used as authorized.
- Personnel are accountable for expenditures from the Fund.
- Fund requests/approvals/purchases are made in a timely way.
- Fund transactions are properly recorded and classified.

PLANNING THE MCR

The MCR was conducted concurrently in Headquarters (OLE and GCEL) and the Divisions/field.

(1) A narrative and corresponding flow chart were prepared describing each sequential step in the administration of the Fund, including: requests for expenditures originating from a special agent or an enforcement officer of NMFS, or from an enforcement attorney; review and approval by the Chief, Office of Law Enforcement and the Assistant General Counsel for Enforcement and Litigation; expenditures from the Fund; and deposits to the Fund.

This narrative (SEE APPENDIX 4: NARRATIVE) and flow chart (SEE APPENDIX 5: FLOW CHART) highlighted the existing internal controls, or safeguards, that managers in Headquarters and the Divisions/field employ to ensure that their plans proceed and resources are used as intended. Internal controls are the plan of organization, methods and procedures adopted by managers to provide "reasonable assurance" that: obligations and costs comply with applicable law; safeguards exist to protect funds against waste, loss, unauthorized use, mismanagement, or misappropriation; and personnel properly record and account for revenues applicable to Departmental operations and functions. The narrative described the NMFS and GCEL employees involved by title, the forms or written correspondence that are prepared and their distribution, the reviews and approvals that take place, and the timing and location of the activities.

(2) Tests, in the form of a written questionnaire and followup interviews, were performed to determine if certain control techniques that contribute significantly to the achievement of a control objective are working as

intended. (SEE APPENDIX 6: TESTING SUMMARY) These control techniques included:

- The Chief, OLE and the AGCEL issue guidance to employees in the Divisions/field, either in writing (memos, directives, lists of previously approved items) or orally.
- The Chief, OLE and the Divisions prorate certain expenditures (between the Fund and appropriated moneys).
- Equipment charged to the Fund is monitored in the Divisions/field.
- The SAC or his designee (usually the Deputy SAC) approves an expenditure from the Fund if he finds it to be consistent with the written or oral guidance from Headquarters.
- Time-sensitive purchase requests indicate when the equipment or service is required.
- An enforcement agent records either the case number associated with his trip or the investigation type on the travel order/trip authorization and/or on the travel voucher.
- The OLE Divisions track all purchases from the Fund by means of the Financial Reporting System (FRS).
- The OLE Divisions maintain files that include all the records justifying major, one-time expenditures from the Fund.
- All purchase requests that are submitted to the Chief, OLE or the AGCEL are assigned a sequential number, described in the Rbase database, summarized in the manual database, and filed chronologically in a binder.
- GCEL field offices retain receipts for supplies that qualify for the Fund.
- Enforcement attorneys code LEXIS time that qualifies for the Fund as part of the computer sign on process.
- The SAC or his designee sign off on purchase orders, training requests, or credit card purchases.
- The SAC refers all requests that are "first time" or unusual, lack a clear precedent (such as a specially outfitted van, radar gun, etc.), are for foreign travel, or are for Regional in service training to the Chief, OLE for review and approval or disapproval.
- Both the Chief, OLE and the AGCEL sign off on all purchase requests submitted to either of them. The Assistant General Counsel for Fisheries also signs off on all GCEL purchase requests.

- The Chief, OLE monitors Financial Management (FIMA) reports, selectively questions some of the larger expenditures, and insures compliance with the guidance from Headquarters.

Headquarters (OLE and GCEL) and the five OLE Divisions and five GCEL field offices were asked to respond to the questionnaire both in writing and orally in followup interviews. (SEE APPENDIX 7: QUESTIONNAIRE) Testing of control techniques was accomplished by: document analyses (reviewing existing records, completed forms, etc.); observations (watching the performance of that control); or supplementary interviews (eliciting information from the personnel who perform that control.) When a sample was taken, it was sufficiently large to ensure that the test results did not happen by chance.

(3) The results of the tests were evaluated to highlight control weaknesses and strengths, particularly as they might apply to the GAO Standards and the requirements of good management.

III. FINDINGS AND CONCLUSIONS

The response to the questionnaire was helpful in raising additional questions about internal controls, finalizing the narrative and flow chart, and identifying the internal controls employed in each Division/field office. (SEE WORKING PAPERS)

The MCR Team identified and analyzed the control weaknesses and strengths found in the test results. (SEE APPENDIX 8: FINDINGS AND CONCLUSIONS) Because the authority and responsibility for Fund administration is divided between two offices in Headquarters and shared with their Division/field components, management planning and coordination are very difficult to achieve. Different internal controls are applied by each office, and their effectiveness varies widely as the test results clearly show.

The MCR Team also evaluated each internal control to be sure that the costs (in resources expended) did not exceed the benefits likely to be derived (in prevention of waste, fraud, abuse, or mismanagement.) Some existing or potential controls were found to be too time consuming or expensive. For example, given the small staffs in the Divisions/field, complete separation of duties in Fund administration (i.e., authorizing,

processing, recording, and reviewing transactions) is not always possible or practical, and there was no evidence of error, waste, or wrongful acts; therefore, the MCR Team did not recommend any further checks and balances. Similarly, "prorating" single, qualified expenditures from the Fund where the amount charged to appropriations is nominal or where some minor commingling is inevitable, also did not appear to be cost effective; however, in order to fully comply with the statute, such prorations must continue.

The MCR Team extensively sampled recent Fund requests and expenditures, and repeatedly interviewed personnel in the Headquarters and the ten other locations. It did not find any "material weaknesses," but recommended improvements to address perceived control problems it found including: incomplete documentation of the guidance about Fund usage; inconsistent recording of Fund justifications and expenditures; inaccurate proration of certain Fund expenditures; and ambiguous or uncertain approval authority. (SEE APPENDIX 9: EVALUATION OF INTERNAL CONTROLS)

IV. RECOMMENDATIONS

The following MCR recommendations were based on these findings and conclusions, and have been arranged to correspond with the six GAO Standards that define the minimum level of quality acceptable for internal control systems.

DOCUMENTATION

Internal control systems and all transactions and other significant events are to be clearly documented, and the documentation is to be readily available for examination.

(1) The Chief, OLE and the AGCEL should distribute written guidance about Fund usage to the Divisions/field as applicable. All documents should be consecutively numbered and dated, in order to insure completeness and accuracy. The OLE documents should be routinely compiled in the OLE Directives Manual under the heading "Asset Forfeiture Fund", and referenced in the National Enforcement Operations Manual (NEOM.) The OLE should obtain GCEL review before issuing its written guidance. The

written guidance should include such topics as "preapproved expenditures" and "proration procedures" as appropriate. The GCEL notebook that records all Fund expenditures submitted to Headquarters should be analyzed to identify, to the extent possible, categories of OLE requests that have been previously approved or disapproved. This list of national "examples" or "precedents" should be made available to the Divisions/field along with the written guidance described above.

Responsible Official: Chief, OLE and AGCEL

Completion Date: January, 1998

(2) Each OLE Division should maintain a centrally located and readily accessible file or binder containing justifications for expenditures in that Division that have been approved by the Chief, OLE.

Responsible Official: SAC's

Completion Date: October, 1997

(3) Each GCEL field office should maintain a centrally located and readily accessible file or binder containing written guidance on Fund usage from the AGCEL. Each OLE Division should compile its guidance in the binder for the OLE Directives Manual.

Responsible Official: Senior Regional Enforcement Attorneys; SAC's

Completion Date: January, 1998

RECORDING OF TRANSACTIONS AND EVENTS

Transactions and other significant events are to be promptly recorded and properly classified.

(4) The Chief, OLE should monitor Fund expenditures that are reported by the OLE Divisions in the FRS (Financial Reporting System) and Fund receipts that are reported by the NOAA CFO/CAO (Finance Office, Receivables Branch), and estimate Fund balances each month. The Chief, OLE should provide the AGCEL with these reports and estimates at monthly meetings.

Responsible Official: Chief, OLE

Completion Date: October, 1997

(5) Expenditure requests from the OLE Divisions should normally be processed in the order they were received in Headquarters; however, requests that have been identified as time-sensitive by the OLE Divisions

may be expedited as needed. Expenditure requests should be held to "standards of excellence" to insure that they are submitted to the Chief, OLE with complete and adequate information the first time.

Responsible Official: Chief, OLE

Completion Date: October, 1997

(6) OLE and GCEL should jointly develop a new and more powerful relational database that managers in both offices can use to track the disposition of all Fund expenditure requests that have been submitted to either office in Headquarters. RDC or another qualified contractor should develop the necessary software, which will replace the DOS RBASE program that GCEL had used. This database should be Windows compatible and accommodate coordinated data entry and retrieval by both offices. In order to maintain a historical record, the GCEL should incorporate entries that have not been posted in the database for almost a year while the RBASE program was inoperable.

Responsible Official: Chief, OLE and AGCEL

Completion Date: April, 1998

(7) GCEL should obtain the new protocols from LEXIS that would enable enforcement attorneys in the Headquarters and field to accurately bill their legal research to the appropriate account.

Responsible Official: AGCEL

Completion Date: October, 1997

EXECUTION OF TRANSACTIONS AND EVENTS

Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority.

(8) The Chief, OLE and the AGCEL should consider establishing a formal procedure to resolve any potential disagreements about whether a specific request for an expenditure from the Fund should be approved. This procedure should afford the Chief, OLE or the AGCEL the opportunity to promptly appeal any decision made by the other to a single authority.

Responsible Official: Chief, OLE and AGCEL

Completion Date: January, 1998

(9) The Chief, OLE should determine and document who (by position) has the authority to approve expenditures (by type and amount) from the Fund,

in Headquarters and in the OLE Divisions. Any delegation of this authority to others in Headquarters or in the OLE Divisions should also be documented by the Chief, OLE or by the SAC's, respectively.

Responsible Official: Chief, OLE and SAC's

Completion Date: October, 1997

(10) Any expenditure by an OLE Division that exceeds \$5K should require the written approval of the Chief, OLE. (There should be no oral approvals for expenditures that exceed \$5K.)

Responsible Official: Chief, OLE (to issue guidance)

Completion Date: October, 1997

SEPARATION OF DUTIES

Key duties and responsibilities in authorizing, processing, recording, and reviewing transactions should be separated among individuals.

(11) The SAC's should continue to have the authority to approve travel requests charged to the Fund, except for their own travel which should be approved by the Chief, OLE.

Responsible Official: SAC's

Completion Date: October, 1997

(12) All invitational training and foreign invitational travel orders should be reviewed for approval by both the Chief, OLE and the AGCEL.

Responsible Official: Chief, OLE and AGCEL

Completion Date: October, 1997

SUPERVISION

Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved.

(13) By November 1 of each year, the Chief, OLE should orally inform the OLE Divisions and the NMFS Administrative and Budget Processes Division of the minimum amount each OLE Division can expect to obtain from the Fund during the current fiscal year. These allocations should be based upon the Fund balance at that time and conservative assumptions about future receipts.

Responsible Official: Chief, OLE

Completion Date: November, 1997

(14) The Chief, OLE, in consultation with the NMFS Administrative and Budget Processes Division, should establish a reliable and consistent cost adjustment process to reconcile errors that may occur in charging expenditures to either the Fund or appropriations; these adjustments should then be made directly by OLE.

Responsible Official: Chief, OLE

Completion Date: January, 1998

(15) The Chief, OLE should continue to sample Fund expenditures in FIMA (Financial Management) reports to determine if the OLE Divisions have complied with Headquarters' guidance; the AGCEL does not need to sample expenditures by the GCEL field offices because most of these (travel, training, contract services and most equipment purchases) have already been reviewed and approved by her. OLE should maintain an "audit book" to sample Fund expenditures identified in FIMA (Financial Management), and determine if they were consistent with written guidance. This audit book should be made available to managers who control Fund usage and to auditors or others involved in analyzing Fund operations.

Responsible Official: Chief, OLE

Completion Date: October, 1997

(16) In order to facilitate management control, GCEL should begin to record and analyze its expenditures using either FRS (Financial Reporting System) or FIMA (Financial Management). The GCEL should also consider if it would be useful to include "preapproved" expenditures (as well as expenditure requests from the GCEL field offices that have been submitted to Headquarters for approval) in the GCEL database. {The Chief, OLE now obtains sufficient information about OLE expenditures from FRS and FIMA reports.}

Responsible Official: AGCEL

Completion Date: October, 1997

ACCESS TO AND ACCOUNTABILITY FOR RESOURCES

Access to resources and records is to be limited to authorized individuals, and accountability for the custody and use of resources is to be assigned and maintained.

No MCR recommendations were made that apply to this GAO Specific Standard. Internal controls in OLE and GCEL are adequate.

When these sixteen recommendations are implemented by the Responsible Officials as scheduled in Fiscal Year 1998, the OLE and GCEL will have reasonable assurance that internal controls are operating as intended.*

* In the following appendices and working papers, the Office of Law Enforcement (OLE) may be referred to by its routing code, "F/EN;" OLE Divisions may be referred to by their location in the five NMFS "Regions" or by their routing code, "F/EN" with an additional number designation; GCEL components that correspond to NMFS Regions may be referred to as "field;" and OLE and GCEL components that are physically located in Silver Spring, MD may be referred to as "Headquarters" or "HQ."